

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

LONNIE GREGORY,

Plaintiff,

v.

**CIVIL ACTION NO. 3:12-CV-121
(JUDGE GROH)**

**CRAIG PHELPS, SHANNA SPIKER,
and in official and individual capacity, and
OFFICER HERB,**

Defendants.

**ORDER DENYING PLAINTIFF'S OBJECTION TO MAGISTRATE JUDGE SEIBERT'S
ORDER DENYING PLAINTIFF'S MOTION TO SUBPOENA INTAKE PHOTOS**

On May 5, 2014, Plaintiff Lonnie Gregory, acting *pro se*, filed an objection to Magistrate Judge Seibert's Order denying Plaintiff's Motion to Subpoena Intake Photos.

Federal Rule of Civil Procedure 72(a) permits a party to submit objections to a magistrate judge's ruling on non-dispositive matters, such as discovery orders. Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). As a non-dispositive matter, this Court's review of a magistrate judge's discovery order is governed by the "clearly erroneous or contrary to law" standard. Fed. R. Civ. P. 72(a). A court's "finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948); see also Harm v. Levin, 772 F.2d 1150, 1152 (4th Cir. 1985).

In this case, Plaintiff filed his first motion to subpoena photos and videos on

February 8, 2014. On March 4, 2014, Magistrate Judge Seibert construed Plaintiff's Motion to Subpoena intake photos as a request for production of documents under Federal Rule of Civil Procedure 34. Therefore, Magistrate Judge Seibert ordered Defendants to provide all photos and videos to Plaintiff at his scheduled deposition on March 19, 2014. On March 26, 2014, Defendants, by counsel, filed a certificate of service stating that in compliance with Magistrate Judge Seibert's March 4, 2014 Order, the photographs and videos were hand delivered to Plaintiff.


Subsequently, on April 23, 2014, Plaintiff filed a motion to subpoena intake photos from October 8, 2010 stating that the intake photo provided from the Martinsburg City Police Department and the Eastern Regional Jail appear to be identical. Magistrate Judge Seibert denied Plaintiff's motion because the Court found that Defendants have fully complied with Plaintiff's discovery requests and have provided all photos or videos in their possession. Magistrate Judge Seibert pointed out that Plaintiff's observation that the photographs appear to be identical is something that he may argue at trial.

Although Plaintiff filed an objection to Magistrate Judge Seibert's Order, he did not present any new facts or arguments. Rather, Plaintiff simply restated that he feels the two photographs are identical even though Defendants are attempting to label them as two separate intake photographs. Upon review of Magistrate Judge Seibert's April 25, 2014 Order and Plaintiff's objection thereto, the Court does not find that Magistrate Judge Seibert's Order is clearly erroneous or contrary to law. Accordingly, Plaintiff's objection to Magistrate Judge Seibert's Order is **OVERRULED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and/or *pro se* parties.

DATED: May 28, 2014


GINA M. GROH
UNITED STATES DISTRICT JUDGE